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REMARKS: **Serial No. 09/675,281, filed 09/29/2000**
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DATE: November 16, 2004

CLIENT/MATTER NO. 1662-30100 (200304416-1)

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PATENT APPLICATION

ATTORNEY DOCKET NO. 200304416-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Andrew BROWN et al.

Confirmation No.: 1271

Application No.: 09/675,281

Examiner: B. R. Bruckart

Filing Date: 09/29/2000

Group Art Unit: 2155

Title: COMPUTER CARD FOR STORING BOOTABLE IMAGES AND PROVIDING REMOTE MANAGEMENT FUNCTION

Mail Stop Appeal Brief-Patents
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TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 11/16/2004.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $340.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

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Number of pages: 25

Typed Name: Christina L. Paz

Signature: Christina L. Paz

Respectfully submitted,

Andrew BROWN et al.

By

Mark E. Scott

Attorney/Agent for Applicant(s)
Reg. No. 43,100

Date: 12/20/2004

HEWLETT-PACKARD COMPANY
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P. O. Box 272400
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PATENT APPLICATION

ATTORNEY DOCKET NO. 200304416-1

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Number of pages: 25

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Andrew BROWN et al.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Andrew BROWN et al.	§	Confirmation No.:	1271
Serial No.:	09/675,281	§	Group Art Unit:	2155
Filed:	09/29/2000	§	Examiner:	B. R. Bruckart
For:	Computer Card For Storing Bootable Images And Providing Remote Management Function	§	Docket No.:	200304416-1

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: December 20, 2004

Sir:

Appellants hereby submit this Appeal Brief in connection with the above-identified application. A Notice of Appeal was filed via facsimile on November 16, 2004.

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST 3
II. RELATED APPEALS AND INTERFERENCES 4
III. STATUS OF THE CLAIMS 5
IV. STATUS OF THE AMENDMENTS 6
V. SUMMARY OF THE CLAIMED SUBJECT MATTER 7
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL 10
VII. ARGUMENT 11
A. Claims 1-15 and 22-28 11
B. Claims 16-21 14
VIII. CONCLUSION 17
IX. CLAIMS APPENDIX 18

I. REAL PARTY IN INTEREST

The real party in interest is the Hewlett-Packard Development Company, a Texas Limited Partnership, having its principal place of business in Houston, Texas, through its merger with Compaq Computer Corporation (CCC) which owned Compaq Information Technologies Group, L.P. (CITG). The assignment from the CCC to CITG was recorded on January 15, 2002, at Reel/Frame 012478/0912. The Change of Name document from CITG to HPDC was recorded on December 2, 2003, at Reel/Frame 014177/0428.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Originally filed claims:	1-28.
Claim cancellations:	None.
Added claims:	None.
Presently pending claims:	1-28.
Presently appealed claims:	1-28.

IV. STATUS OF THE AMENDMENTS

No claims were amended after the final Office action dated August 16, 2004.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Various embodiments of the invention are directed to a computer card for storing bootable images and providing remote management functions.[1] At least some of the illustrative embodiments are a system for managing a computer system comprising a host computer system with a management sub-system (said management sub-system comprising a management processor and a management memory),[2] a remote management console capable of communicating remotely with said management sub-system.[3] The management sub-system is capable of receiving an image of a bootable program for the host computer system from said remote management console[4] (and wherein said image is stored in the memory in said management sub-system),[5] and then wherein said host computer system loads said image during its boot cycle (and executes said image as part of its boot cycle).[6]

Other illustrative embodiments are a system for managing a computer, the system comprising a host computer system[7] and a management console.[8] The host computer system comprises a processor,[9] a bus bridge coupled to said processor,[10] a system bus coupled to said bus bridge (the system bus including at least one port configured to receive a peripheral device),[11] and a management sub-system including a management processor and memory (the management

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[1] Specification Title.

[2] Specification Page 10, lines 3-6; Page 15, lines 10-12; Figures 1 and 2. Hereinafter, citations to the Specification take the form (Page [page number], lines [line numbers]).

[3] (Page 10, lines 3-6); Figures 1 and 2.

[4] (Page 20, lines 19-20); Figure 3.

[5] (Page 21, lines 2-3); Figure 3.

[6] (Page 21, line 12 – Page 22, line 6); Figure 3.

[7] (Page 10, lines 3-6); Figure 1.

[8] *Id.*

[9] (Page 13, lines 12-14); Figure 2.

[10] (Page 13, lines 14-15); Figure 2.

[11] (Page 14, lines 4-11); Figure 2.

sub-system coupling to said system bus via said port).[12] The management console couples to said management sub-system via a communications link,[13] and the management console comprises a console processor[14] and one or more peripheral drives[15] (and wherein said management console transfers images from said peripheral drive to said management sub-system via said communications link).[16] The management sub-system emulates a disk drive, so that the computer system checks the management sub-system during each boot cycle to determine if the management sub-system includes a bootable image.[17]

Yet other illustrative embodiments are a managed computer system (capable of being controlled by a remote management console), said managed computer system comprising a host processor,[18] a system bus coupled to said processor by a bus bridge,[19] a system memory coupled to said processor,[20] and a management sub-system coupled to said system bus.[21] The management subsystem comprises a management processor,[22] a memory coupled to said management processor for storing software and data,[23] and a network interface coupling said managed computer system to said remote management console via a communications link.[24] The management sub-system capable of receiving an image of a bootable program from said remote management console,[25] and

---

[12] (Page 13, lines 4-5; Page 15, lines 10-12); Figure 2.

[13] (Page 11, lines 17-21); Figure 1.

[14] (Page 18, lines 16-18); Figure 2.

[15] (Page 19, lines 18-21); Figure 2.

[16] (Page 20, line 7 – Page 21, line 3); Figure 3.

[17] (Page 17, lines 10 – Page 18, line 6); Figure 3.

[18] (Page 13, lines 12-14); Figure 2.

[19] (Page 13 lines 4-11; Page 13, lines 14-15); Figure 2.

[20] (Page 13, lines 12-14); Figure 2.

[21] (Page 13, lines 4-5; Page 15, lines 10-12); Figure 2.

[22] (Page 15, lines 10-12); Figure 2.

[23] (Page 15, lines 10-12, Page 15, lines 20-23, Page 20, lines 14-16); Figures 2 and 3.

[24] (Page 11, lines 17-21); Figure 1.

[25] (Page 20, lines 19-20); Figure 3.

the image is stored in the memory in said management sub-system.[26] The host processor loads the image during its boot cycle, and executes said image as part of its boot cycle.[27]

[26] (Page 21, lines 2-3); Figure 3.

[27] (Page 21, line 12 – Page 22, line 6); Figure 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-10, 14-17, 22-24 and 28 are unpatentable over Davis (U.S. Pat. No. 6,205,547) in view of Basu (U.S. Pat. No. 5,452,454).

Whether claims 11-13, 18-21 and 25-27 are unpatentable over Davis in view of Basu and Godse (U.S. Pat. No. 6,202,091).

VII. ARGUMENT

A. Claims 1-15 and 22-28

Claims 1-10, 14-15, 22-24 and 28 stand rejected as allegedly obvious over Davis and Basu. Claims 11-13 and 25-27 stand rejected as allegedly obvious over Davis, Basu and Godse. Claim 1 is representative of this grouping of claims. This grouping is for purposes of this appeal only, and should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the grouping. Rather, the presumption of 35 U.S.C. § 282 shall apply to each claim individually.

Davis appears to be directed to "a system management controller [that] may record and/or modify the state of the computer system's host processor if it fails to execute user level program instructions ... ."[28] In particular, Davis teaches:

> If computer system 100 fails to successfully complete either POST or OS boot procedures (the 'no' prongs of steps 302 and 304), SMC 102 detects this (step 308) and, thereafter, may capture the state of processor 104 to a log file and contact a remote device via NIC 118 or modem 120 to report the problem (step 310). On start-up error detection, SMC 102 may also detect and report many types of errors before the system boots.[29]

Davis does not appear to even contemplate booting from a remote image. In fact, the Office action dated August 16, 2004 admits, "The Davis reference does not explicitly state receiving an image of a bootable program."[30]

Basu appears to be directed to a generic remote boot for network workstations by creating a local bootable code image.[31] The Basu system does not utilize a system management controller; rather, Basu contemplates the partial initialization of the target or client personal computer, which establishes a connection to the server and downloads an image.

> **To begin the remote boot operation the client PC first initializes itself sufficiently to communicate on the network with**

---

[28] Davis Abstract.

[29] Davis, Col. 4, lines 17-24.

[30] Office action dated August 16, 2004, Page 3, lines 5-6.

[31] Basu Title.

> **the VAX server.** This initialization may be provided by initially booting the client PC from a local floppy disk containing initialization software modules required to start a generic "floppy remote boot procedure ... ."[32]
>
> Network communications at this point is [sic] established using the MOP protocol. The client PC sends a MOP download request message to the VAX server to request the GENERIC TASK IMAGE file which will provide the PC with means to establish a temporary network connection to the dedicated service LAD disk 17. The VAX server responds to the request by using MOP to download the GENERIC TASK IMAGE file from the VAX server 16 to the conventional memory of the PC client.[33]
>
> Once the PC client-to-service LAD disk connection is established using the LAST protocol, the client PC copies the contents of the service LAD disk ... .[34]

Consistent with the fact that Basu fails to teach a system management controller, Basu copies the image from the server directly to the memory of the client personal computer.

> **[T]he client PC copies the contents of the service LAD disk into its own extended memory system (XMS), i.e., it creates a LAD disk image (or LAD RAM disk) in XMS.**[35]

Once the LAD disk image is copied to the memory of the client personal computer, the client personal computer is booted from the disk image.[36]

Illustrative claim 1, by contrast, specifically recites, "a host computer system comprising a management sub-system, said management sub-system comprising a management processor and a management memory; and a remote management console capable of communicating remotely with said management sub-system ... ." Appellants respectfully submit that the modification to the

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[32] Basu Col. 7, lines 62-68 (emphasis added).

[33] Basu Col. 8, lines 8-17.

[34] Basu Col. 8, lines 22-27.

[35] Basu Col. 8, lines 23-28 (emphasis added).

[36] *See, e.g.*, Basu Abstract.

references proposed to arrive at the alleged obviousness changes the principle of operation of Basu, and thus the references are not sufficient to render the claims *prima facie* obvious.[37] In particular, Basu teaches partial initialization of the client personal computer, which establishes a connection to the server and downloads an image. Basu goes to great length to describe the "generic task image" having sufficient functionality to copy the LAD disk image.[38] Modifying Basu to use the system management controller of Davis is not only not suggested[39] in Davis or Basu, but it changes the entire principle of operation of Basu which relies on a partial booting of the client personal computer. For this reason alone, the rejections of the pending claims should be reversed and the case set for issue.

Claim 1 further recites, "wherein said management sub-system is capable of receiving an image of a bootable program for the host computer system from said remote management console, and **wherein said image is stored in the memory in said management sub-system; and then** wherein said host computer system loads said image during its boot cycle, and executes said image as part of its boot cycle." Even, *arguendo*, considering Davis and Basu together (which Appellants consider to be improper), Davis and Basu still fail to teach the limitations of illustrative claim 1. In particular, Davis and Basu, at best, would teach only that the system management controller of Davis should be responsible for copying LAD disk image from the server **to the memory of the client personal computer of Basu**, just as taught in Basu. Such a system fails to teach or suggest, "wherein said image is stored in the memory in said management sub-system; **and then** wherein said host computer system loads said image during its boot cycle, and executes said image as part of its boot cycle." For this additional reason, Davis and Basu fail to teach or suggest the limitations of illustrative claim 1.

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[37] *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959); *see also* Manual of Patent Examining Procedures (MPEP) § 2143.02.

[38] *See, e.g.*, Basu Col. 8, line 45 through Col. 24, line 52.

[39] *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992)("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.").

Based on the forgoing, Appellants respectfully submit that the rejections of the claims in this first grouping be reversed, and the claims set for issue.

B. Claims 16-21

Claims 16 and 17 stand rejected as allegedly obvious over Davis and Basu. Claims 18-21 stand rejected as allegedly obvious over Davis, Basu and Godse. Claim 16 is representative of this grouping of claims. This grouping is for purposes of this appeal only, and should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the grouping. Rather, the presumption of 35 U.S.C. § 282 shall apply to each claim individually.

Davis appears to be directed to "a system management controller [that] may record and/or modify the state of the computer system's host processor if it fails to execute user level program instructions ... ."[40] In particular, Davis teaches a system management controller monitoring power-on self test and/or operating system procedures, reporting errors and making log files of such errors.[41] Davis does not appear to even contemplate booting from a remote image. In fact, the Office action dated August 16, 2004 admits, "The Davis reference does not explicitly state receiving an image of a bootable program."[42]

Basu appears to be directed to a generic remote boot for network workstations by creating local bootable code image.[43] The Basu system does not utilize a system management controller; rather, Basu contemplates the partial initialization of the client personal computer, which establishes a connection to the server and downloads an image.[44] Consistent with the fact that Basu fails to teach a system management controller, Basu copies the image from the server to directly to the memory of the client personal computer.[45] Once the LAD disk

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[40] Davis Abstract.

[41] Davis, Col. 4, lines 17-24.

[42] Office action dated August 16, 2004, Page 3, lines 5-6.

[43] Basu Title.

[44] Basu Col. 7, lines 62-66; Col. 8, lines 6-17; Col. 8, lines 22-27.

[45] Basu Col. 8, lines 23-28.

image is copied to the memory of the client personal computer, the client personal computer is booted from the disk image.[46]

Illustrative claim 16, by contrast, specifically recites, "a host computer system comprising ... a management sub-system including a management processor and memory; [and] a management console coupled to said management sub-system via a communications link ... wherein said management console transfers images from said peripheral drive to said management sub-system ... ." Appellants respectfully submit that the modification to the references proposed to arrive at the alleged obviousness changes the principle of operation of Basu, and thus the references are not sufficient to render the claims *prima facie* obvious.[47] In particular, Basu teaches partial initialization of the client personal computer, which establishes a connection to the server and downloads an image. Basu goes to great length to describe the "generic task image" having sufficient functionality to copy the LAD disk image.[48] Modifying Basu to use the system management controller of Davis is not only not suggested[49] in Davis or Basu, but it changes the entire principle of operation of Basu which relies on partial booting of the client personal computer. For this reason alone, the rejections of the pending claims should be reversed and the case set for issue.

Claim 16 further recites, "wherein said management console transfers images from said peripheral drive to said management sub-system; and wherein said management sub-system emulates a disk drive, so that the computer system checks the management sub-system during each boot cycle to determine if said management sub-system includes a bootable image." Even, *arguendo*, considering Davis and Basu together (which Appellants consider to be improper), Davis and Basu still fail to teach the limitations of illustrative claim 16. In

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[46] *See, e.g.*, Basu Abstract.

[47] *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959); *see also* Manual of Patent Examining Procedures (MPEP) § 2143.02.

[48] *See, e.g.*, Basu Col. 8, line 45 through Col. 24, line 52.

[49] *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992)("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.").

particular, Davis and Basu, at best, would teach only that the system management controller of Davis should be responsible for copying LAD disk image from the server **to the memory of the client personal computer of Basu**, just as taught in Basu. Such a system fails to teach or suggest, "wherein said management console transfers images from said peripheral drive to said management sub-system." For this additional reason, Davis and Basu fail to teach or suggest the limitations of illustrative claim 16.

With regard to the claimed limitation of "wherein said management sub-system emulates a disk drive," the Office action dated August 16, 2004 cites Basu Column 4, lines 1-10;[50] however, Basu in general teaches, and thus the cited location teaches, that the LAD disk image is copied to the client personal computer memory,[51] and thus any emulation taught by Basu is from Basu's conventional memory, not a "management sub-system [that] emulates a disk drive." For this additional reason, Davis and Basu fail to teach or suggest the limitations of illustrative claim 16.

Based on the forgoing, Appellants respectfully submit that the rejections of the claims in this second grouping be reversed, and the grouping set for issue.

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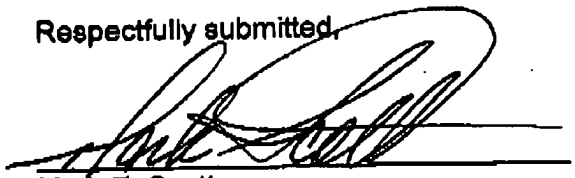
[50] Office action dated August 16, 2004, Page 6, line 14.

[51] Basu Col. 4, lines 47-55; Col. 8, lines 14-17; Col. 8, lines 22-27; Col. 8, lines 50-53 ("In addition to downloading the GENERIC TASK IMAGE to the PC client, the VAX server informs the client PC where to load the GENERIC TASK IMAGE in the client PC conventional memory.")

VIII. CONCLUSION

For the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,



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